CHRONOLOGY REPORT
1994

Worldwide Regulatory Affairs

20462819 71

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

CHRONOLOGY OF RECENT TOBACCO ISSUES

EPA	2
"DAY ONE"	6
INGREDIENTS	10
ALLEGED NICOTINE "MANIPULATION"/"ADDICTION"	13
OSHA	17
U.S. LITIGATION	21
FTC	27
WAXMAN HEARINGS AND RELATED ACTIVITIES	28

2046281972

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

EPA

January 1993
7 EPA released Final ETS Risk Assessment declaring ETS a "Group A" carcinogen.

June 1993
22 Philip Morris, The Flue-Cured Tobacco Cooperative Stabilization Corporation and other tobacco companies and trade organizations filed suit against the EPA, challenging the EPA's report of January 7, 1993 classifying environmental tobacco smoke (ETS) as a "Group A" or known human carcinogen. The groups are seeking a declaration that the EPA's designation of ETS is null and void. Plaintiffs also seek an injunction requiring the EPA to withdraw both the designation and the Risk Assessment.

July 1993
21 The EPA moved to dismiss the lawsuit on the grounds that the courts have no legal right to review government reports.

EPA releases pamphlet Secondhand Smoke: What You Can Do About Secondhand Smoke as Parents, Decision Makers and Building Occupants.

EPA Administrator Carol Browner testifies at Waxman Subcommittee Hearing on ETS Risk Assessment.

September 1993
20 The plaintiffs made a request for oral argument regarding the motion to dismiss the lawsuit against EPA.

November 1993
2 EPA joined in the request for oral argument regarding the motion to dismiss the lawsuit against EPA.

March 1994
8 The Congressional Research Service (CRS), an independent research arm of Congress, issued a report which looked at the EPA's ETS Risk Assessment. CRS observed that "it is unusual to return to a study after the fact, lower the required significance level, and declare its results to be supportive rather than unsupportive of the effect one's theory suggests should be present."

April 1994

2046281973

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

21 EPA releases its cost-benefit analysis of banning smoking in all public buildings. The EPA concluded that benefits outweighed the costs by at least $39 billion a year.

May 1994

11 CRS Researcher Dr. Jane G. Gravelle and economist Robert Tollison testify before the Subcommittee on Clean Air and Nuclear Regulation on ETS and the EPA's ETS risk Assessment where they concluded that the "statistical evidence does not appear to support the conclusion that there are substantial health effects of passive smoking."

26 RJR launches its ad campaign regarding ETS and the second ad debates the EPA's ETS Risk Assessment.

June 1994

2 FORBES MEDIA CRITIC: The Best and Worst of America's Journalism article by Jacob Sullum discusses the EPA and its faulty science as well as the press reaction to EPA's ETS Risk Assessment.

27 Philip Morris launches five-part advertising campaign "Were We Misled?" in an effort to bring more balance to the debate over the validity of the EPA's 1993 ETS Risk Assessment Report.

July 1994

20 EPA's motion to dismiss was rejected in a written order by U. S. District Court Judge William Osteen. Parties were notified of an initial pretrial conference scheduled for August 29. Counsel for the parties were directed to meet and confer no later than August 15, to discuss the basis of their claims and defense and develop a proposed discovery plan. If the parties agreed on a joint discovery plan, the pretrial conference (8/29) would be canceled automatically.

22 Rep. Henry Waxman issues a press release on ETS entitled "ETS Facts" citing industry experts and a poll of the Science Advisory Board of the Center for Indoor Air Research conducted by Waxman and his staff.

26 Coalition on Smoking or Health (COSH) holds a press conference to "review...various messages contained in these advertisements." (RJR and PM advertisements)

August 1994

2046281974

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

22 The EPA announced in the Federal Register that it would convene a workshop on September 12-14 to review draft revisions to its 1986 Guidelines for Carcinogenic Risk Assessment.

23 Rep. Henry Waxman expanded his subcommittee's investigation into tobacco and tobacco products by requesting information related to ETS and alleged "secret contractual relationship" between Healthy Buildings International and the tobacco industry.

August 1994 (cont.)

23 Following a conference between the parties, the parties filed a joint report informing the court that the EPA will serve responses to plaintiffs' pending requests for admissions and documents by 9/30/94. The parties will also file status reports no later than 10/7/94.

September 1994

30 The EPA filed its second motion to dismiss based on its claim of plaintiffs lack of standing. In the alternative, EPA requests that the court limit review of the complaint to the administrative record. It is based on this request that the EPA has requested a stay of discovery.

October 1994

7 The parties filed separate status reports with the North Carolina Court. The parties agreed that plaintiffs have until 11/1/94 to respond to various motions made by the EPA at the end of September (including its second motion to dismiss and motion to stay discovery).

29-30 The ASHRAE (American Society of Heating, Refrigerating and Air Conditioning Engineers) Committee met to continue its attempts to revise ASHRAE standard 62-1989 (ventilation for acceptable Indoor Air Quality).

November 1994

1 Plaintiffs filed responsive papers to the motions filed by EPA on September 30 including asking the court to deny EPA's motions for partial summary judgment and for a protective order foreclosing discovery and to hold the remaining motions, including EPA's motion for judgment on the pleadings (motion to dismiss) EPA's challenge to plaintiffs standing and EPA's motion seeking dismissal of plaintiffs due process claims in abeyance until discovery is closed.

1 Plaintiffs also filed a sworn declaration of a former EPA toxicologist criticizing numerous aspects of the 1990 and 1992 drafts, as well as the final Risk Assessment.

2046281975

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

December 1994

28 Judge William Osteen granted the EPA's motion for a stay of discovery until further order of the court and ordered that the plaintiffs file a brief by January 17 responding to the EPA's motion for judgment on the pleadings on standing.

20462819 76

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

"DAY ONE"

February 1994

28 ABC's "Day One" program aired segment alleging that tobacco companies "spike" cigarettes with nicotine.

March 1994

3 William Campbell sends letter to Members of the U.S. Congress to refute attacks made on PM and on the industry to set the record straight and to explain PM's position.

7 ABC's "Day One" aired Part 2 of their report on the tobacco industry. The report focused on the ingredients that are used in cigarette manufacturing and alleged that many of these ingredients are toxic and are not government-approved.

8 PM Desk drop: Letter from William Campbell to all employees of NYO and Rye Brook regarding ABC-TV's "Day One".

11 In a case filed before the Circuit Court of Morgan County, Kentucky, an inmate seeks damages for unspecified injuries he received as a result of not being informed of the additives in cigarettes (he states in the complaint that he became aware of the issue as a result of the March 7 "Day One" program).

14 ABC's "Day One" aired story on Congressman Waxman's call for investigations into whether or not tobacco companies add nicotine to their products.

24 Philip Morris files $10 billion suit against ABC for libel in connection with allegations made on "Day One."

PM Desk drop: Letter from William Campbell to all employees of NYO and Rye Brook regarding ABC Lawsuit.

29 Punitive class action filed against Philip Morris and other tobacco companies based upon alleged "spiking" of cigarettes. Other similar lawsuits are subsequently filed.

June 1994

15 Associated Press reports that ABC is seeking information about nicotine from competitors of Philip Morris to bolster their defense of the libel suit brought by PM and that ABC filed papers in Richmond Circuit Court requesting data from 13 tobacco companies.

2046281977

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

July 1994

7 In its first formal response to a lawsuit filed in March by Philip Morris, ABC defended its reporting and said the suit could "dampen news reporting" on public health.

August 1994

4 According to an article in the Richmond Times-Dispatch, Philip Morris has asked a Richmond Circuit Court judge to oust requests by ABC for information from companies that are not parties to Philip Morris' $10 billion libel suit against the television network. Philip Morris contended in papers filed last week that the requests are 'unreasonable and oppressive' in several respects.

September 1994

13 "A hearing has been set up for Sept. 13 on ABC's contention that Philip Morris' lawsuit did not provide enough information to support a case with First Amendment implications." Richmond Times-Dispatch, August 4, 1994

16 The judge heard arguments regarding ABC's motion for bill of particulars (the request filed by ABC for statement of specific charges Philip Morris made against them). The judge ruled the pleadings were adequate and a bill of particulars should not be ordered. The court also set a June 5, 1995 trial date.

October 1994

12 The Judge heard arguments regarding ABC's motion to compel the production of documents by Philip Morris, the production of which Philip Morris argues is extremely burdensome and beyond the boundaries of permissible discovery.

November 1994

22 The first day of John Slade's deposition was conducted in Iselin, New Jersey.

John Slade is a medical doctor affiliated with Rutger's University and is a long time anti-smoking activist. In the past ten years he has developed an interest in "addiction", particularly nicotine "addiction". He is a frequent speaker on nicotine issues and has also been published on the issue. He was deposed in the ABC case in order to gather information regarding his contacts with ABC on the subject matter of the "Day One" broadcast.

December 1994

2046281978

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

7 The Judge heard arguments regarding Philip Morris's motion to compel document production from ABC and an ABC's demurrer motion (motion to dismiss).

December 1994 (cont.)

20, 21 The first two days of Cliff Douglas's deposition was conducted in Bethesda, Maryland (to be continued at an unspecified time).

Cliff Douglas is an attorney who is Assistant Director of COSH (Coalition on Smoking or Health). He is also a strong anti-smoking activist. He, like Slade, was deposed to gather information regarding his contacts with ABC on the subject matter of the "Day One" broadcast.

30 ABC responded to Philip Morris's Interrogatory No. 3, which asks whether they intend to rely on the advice of Counsel in the Defense of the action, declining at this time and reserving their right to amend their response.

30 The judge issued a ruling denying ABC's demurrer motion (motion to dismiss); granting Philip Morris' motion to compel discovery against ABC regarding other ABC cigarette-related broadcasts; granting ABC's motion to compel limited discovery against Philip Morris regarding motive information as to why Philip Morris "adds back nicotine" to the reconstitution process limited however to domestic products; and quashing ABC's wide ranging discovery subpoena's served on non-party tobacco companies and tobacco-related companies.

January 1995

6 Court heard arguments on whether ABC is obligated to disclose the identities of "confidential sources" relied upon by ABC in preparing and broadcasting the "Day One" programs and whether subpoenas issued by Philip Morris to non-parties possessing information about the identities of the "confidential sources" should be quashed.

26 Richmond Circuit Court Judge grants Philip Morris's motion to compel ABC to disclose the identities of the four "confidential sources" relied upon by ABC and orders disclosure of their identities by February 5, 1995. Judge also denies ABC's motion to quash subpoenas to non-parties thereby allowing Philip Morris to obtain identifying information in the hands of non-parties.

2046281979

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

30 Judge stays January 26 "confidential source" ruling in response to ABC's emergency application and schedules a March 1 hearing to permit ABC to seek rehearing of the ruling.

2046281980

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

INGREDIENTS

April 1994

8 National Public Radio reported that it obtained a list of 13 "secret" ingredients that are used in cigarette manufacturing. It alleged that several of the chemicals were not approved for use in food and that others have been proven to cause liver damage and convulsions in animals.

13 Six major US cigarette companies released an independent safety assessment and a combined industry list of the 599 ingredients added to tobacco in the manufacturing of cigarettes.

14 Philip Morris placed advertisements in 6 major daily newspapers regarding the ingredients that it adds to tobacco used in the manufacturing of cigarettes; "Ingredient Controversy: We want you to know."

The CEOs of the major tobacco companies testified before the subcommittee on Health and Environment of the House Energy and Commerce Committee; hearings last approximately six hours.

PM Desk drop: Letter from William Campbell to all employees of NYO and Rye Brook.

15 Philip Morris placed advertisements in the top 50 daily newspapers in the U.S. offering William Campbell's testimony before Congress, the ingredients list and safety assessment of ingredients to the public; "The Facts You Should Know."

18 Article in major daily, ARBEITBLADET in Norway, reports that the Norwegian Council on Smoking and Health is considering requesting that the Ministry of Health and Social Affairs assist in forcing the Norwegian tobacco industry to disclose cigarette ingredients.

Current President of APACT, Dr. Hatai, was quoted in the press demanding that the current government implement the disclosure requirements he had previously recommended.

21 Canadian Tobacco Manufacturers' Council (CMTC) released statement and list of 13 additives.

May 1994

2 A Taiwan provincial assembly member suggested that the TTWMB, as well as the importers, should follow suit; and have their ingredients printed on cigarette

2046281981

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

packs in response to the disclosure of ingredients by the six major U.S. cigarette companies.

May 1994 (cont.)

23 A proposal within the Argentine Chamber of Deputies was made to create a new department, equivalent to the U.S. FDA, to study tobacco/cigarettes and its various ingredients/additives.

In Poland, PM addressed revision to Executive Order No. 233 issued by the Minister of Health, "regarding the list of permitted additives and technical impurities in foodstuffs and stimulants", although no official action has been taken.

June 1994

The city of Buenos Aires, Argentine passed Ordinance 47669 "Program of Toxicological Control of Tobacco". Ingredient disclosure could be required.

The Thailand Tobacco Monopoly again disclosed the ingredients of their major brand to the Thai government, putting pressure on the importing companies to do likewise.

July 1994

26 Coalition on Smoking or Health (COSH) holds a press conference to "review...various messages contained in these advertisements." (RJR and PM advertisements regarding ingredients.)

September 1994

21 In response to June 6, 1994 letter from Dr, Michael Eriksen, Director of the Office of Smoking and Health (OSH), the following information was supplied by the seven (including Gallaher Limited) companies represented by Covington and Burling:

1. Chart listing Maximum Use Level (MUL) ingredients
2. List of 28 highest use ingredients
3. Citations to published studies and references used by the industry's scientific consultants
4. List of ingredients added to the non-tobacco components of cigarettes, MULs and total quantities of each of their ingredients.

November 1994

A law regarding "Restrictions of Tobacco-Related Activities" was passed by the lower chamber of the congress in Chile. Article 8 contains provisions regarding ingredients.

2046281982

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

In Australia the Senate Standing Committee on Community Affairs began an inquiry into the tobacco industry. Senator Meg Lee announced that she would ask for ingredient information.

December 1994

A normal end of year disclosure of the industry's 1994 list of ingredients added to tobacco during the manufacture of cigarettes was made by Covington and Burling to the Department of Health and Human Services.

2046281983

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

ALLEGED NICOTINE "MANIPULATION"/"ADDICTION"

February 1994

25 *The Food and Drug Administration (the "FDA") is not authorized to regulate cigarettes. In fact, the FDA has repeatedly advised Congress that it believed that it did not have jurisdiction over cigarettes.*

The Federal Food, Drug, and Cosmetic Act (the "Act") grants to the FDA the authority that it now uses to regulate products accounting for one quarter of all consumer spending. Under the Act, however, the FDA can regulate a product as a drug only when it can establish that the product is intended for use as a drug. Thus limited by its statutory mandate and plain language of the Act, the FDA has consistently refused to assert jurisdiction over cigarettes as presently marketed.

On February 25, 1994, however, in a publicly released letter, Commissioner Kessler announced the FDA's intention to reconsider the previously settled issue of whether the FDA has the legal authority to regulate cigarettes as drugs.

March 1994

2 Rothmans, Benson and Hedges Inc. releases press statement discounting allegations and press reports that Canadian tobacco manufacturers are adding nicotine to cigarettes.

4 Action on Smoking and Health (ASH) petitioned the FDA to commence a rulemaking proceeding to determine whether some or all cigarettes containing nicotine are subject to FDA jurisdiction as drugs and to determine the regulatory approach that the FDA should adopt if it asserts jurisdiction.

7 Coalition on Smoking and Health (COSH) petitioned the FDA to classify all cigarettes containing nicotine as drugs.

Senator Kennedy asked the General Accounting Office to investigate "nicotine "manipulation" by cigarette companies."

10 Congressman Henry Waxman asked the Justice Department to investigate whether or not tobacco companies have broken the law by failing to report added nicotine in cigarettes.

16 FDA Commissioner David Kessler testified before a House Ways and Means subcommittee on the possibility of regulation of nicotine in cigarettes.

2046281984

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

25 FDA Commissioner David Kessler testified before a House subcommittee on the possibility of regulating nicotine-containing tobacco products under the Federal Food, Drug and Cosmetics Act.

March 1994 (cont.)

31 Congressman Henry Waxman held a press conference to release a study on nicotine by former Philip Morris researcher, Victor DeNoble. Waxman alleged that the study was suppressed by Philip Morris because it proved that nicotine is addictive.

April 1994

14 The CEOs of the major tobacco companies testified before the subcommittee on Health and Environment of the House Energy and Commerce Committee, hearings last approximately six hours.

28 Former Philip Morris scientists Victor DeNoble and Paul Mele testified before the Waxman subcommittee addressing nicotine research in the early 1980's. Both researchers claimed that Philip Morris would not allow them to publish internal research on nicotine.

May 1994

7 The New York Times reported that Brown & Williamson knew of the health hazards associated with smoking as early as 1963 and that this information was allegedly shared with other tobacco companies.

17 Former Health Secretary Joseph Califano testified before Waxman's committee on the Brown & Williamson documents and stated he received a letter from Brown & Williamson that was "intimidating." Brown & Williamson subsequently released a copy of the letter sent to Califano which he described in his testimony that day as "intimidating."

June 1994

8 R. J. Reynolds runs advertisement, "We Do Not 'Spike' Our Cigarettes With Nicotine," picturing RJR Chairman James Johnston.

21 Subcommittee on Health and Environment held a hearing to receive update on the status of FDA's activities related to Dr. David Kessler's investigation regarding the regulation of tobacco products under the Federal, Food, Drug and Cosmetic Act. Using internal documents from Brown & Williamson, Commissioner Kessler alleges that Brown & Williamson used genetic engineering to create a high-nicotine tobacco plant (Y-1).

2046281985

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

During the hearing Dr. Kessler also alleged the industry was manipulating nicotine through its use of ammonia compounds in the manufacturing of cigarettes. According to Dr. Kessler, the industry's use of ammonia compounds in cigarette manufacturing allows for a higher nicotine "yield" from processed tobacco.

June 1994

23 Brown & Williamson Chairman Thomas Sandefur appears before subcommittee on Health and the Environment to answer charges of nicotine "manipulation".

Philip Morris issued a statement in response to FDA Commissioner Kessler's testimony before the House subcommittee regarding use of ammonia compounds in the manufacturing process.

August 1994

2 The Drug Abuse Advisory Committee (DAAC) met. at the request of FDA Commissioner Dr. David Kessler. The Committee consisted of doctors and researchers from around the U.S. and among the questions being discussed were: "Is the amount of nicotine delivered by currently marketed cigarettes likely to lead to "addiction" is a typical smoker?" and "Is there a maximum amount of nicotine delivered per cigarette that would lead to "addiction"?"(WSJ, August 1, 1994). The industry was allocated only one hour to address the issues.

The Committee voted 8-1 that cigarettes are "addictive" and that nicotine is the "drug in tobacco that causes "addiction"." The Committee also voted unanimously that "the amount of nicotine delivered by currently marketed cigarettes" is "likely to lead to "addiction" in the typical smoker." The panel was unable to determine any specific level at which nicotine would become "addictive." The DAAC has no regulatory authority and no legal authority to review policy issues arising from the sale of cigarettes.

A subcommittee, formed to address the issue of "non-addictive" levels (thresholds) of nicotine in tobacco products, has not met to date.

September 1994

6 PM filed comments with the FDA on the ASH and COSH petitions requesting that the petitions be denied. The comments point out that the applicable legal standards have consistently been applied to deny the FDA jurisdiction over cigarettes.

2046281986

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

October 1994

4 The Coalition on Smoking or Health instituted a petition drive to urge the government to further regulate tobacco.

December 1994

28 ASH filed two petitions with the FDA. The first is a follow-up to the petition filed in March; ASH continues to request that the FDA undertake a formal rulemaking. In the second petition ASH states that it will sue the FDA if it does not take regulatory action, i.e. formal rulemaking in the regulation of products containing nicotine, "without further unreasonable delay."

January 1995

10 The Tobacco Institute (TI) and RJR held a press conference in Washington in which they released a petition of 1.1 million signatures in opposition to FDA regulation of tobacco products. During the press conference, TI also released the results of its public opinion poll showing that the public majority was also in opposition to FDA regulation of tobacco products.

11 COSH held a press conference in which they released 250,000 signatures which supported FDA regulation of tobacco products. In defense of their having collected a smaller number of signatures, COSH claimed that these petitions were only a "first installment" in their collection effort.

2046281987

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

OSHA

The EPA has no regulatory authority on indoor air quality and lacks authority to regulate worker health and safety in the workplace setting. Where the EPA could try to address ETS without a rulemaker using the EPA's own "rules" and the EPA's own selection of data, the Occupational Safety and Health Administration (OSHA) cannot. OSHA has regulatory authority for workplace safety and health. In exercising that authority OSHA is required to follow established Agency rulemaking procedures. Traditionally they have targeted safety through accident prevention measures; however, in the last 10 to 15 years OSHA has been targeting the health of the employee.

September 1991

20 OSHA issued a Request for Information (RFI) regarding indoor air quality. The stated purpose of this RFI was to gather data so that OSHA could determine "whether regulatory action is appropriate and feasible to control health problems related to poor indoor air quality."

March 1992

20 The comment period expired on March 20, 1992. However, OSHA stated publicly that it would continue to accept comments until a decision about regulating indoor air quality had been reached. Comments postmarked after March 20, would be marked "late." Over 1,200 comments were submitted in response to the RFI.

31 The AFL-CIO petitioned OSHA to promulgate an overall IAQ standard.

May 1992

OSHA responded to the AFL-CIO petition saying that an overall IAQ standard was under consideration.

January 1994

16 The Washington Post reported that OSHA had drafted a Federal Register notice outlining a plan to address workplace IAQ and ETS in a single rulemaking.

February 1994

10 OSHA Administrator Joseph Dear endorsed OSHA reform legislation (H.R. 1280) at a hearing before the Labor Standards, Occupational and Health Subcommittee of the House Education and Labor Committee and he suggested that in the next few weeks OSHA would take steps in the process of regulating indoor air quality (IAQ) and ETS.

2046281988

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

22 According to press reports, a draft Federal Register notice outlining OSHA's plan to address workplace IAQ and ETS in a single rulemaking was delivered to OSHA Administrator Joseph Dear.

March 1994

25 OSHA/Department of Labor held a press conference to announce the release of a proposed rule on indoor air quality and the beginning of informal rulemaking on IAQ. The proposal banned smoking in the nation's workplaces, a proposal that would affect more than six million job sites, including plants, restaurants, offices and other commercial buildings.

April 1994

5 OSHA published its Proposed Rule on IAQ in the Federal Register. The Federal Register Notice outlined the schedule and procedures for the public to comment on OSHA's proposed rule.

June 1994

22 According to the public docket as of June, OSHA had received 5,499 public comments. OSHA formally extended the public comment period.

July 1994

27 According to the public docket as of July, it contained more than 17, 000 comments.

OSHA had also received 31 notices of intention to appear at the public hearing which was then scheduled to commence on September 20, 1994.

August 1994

11 ASH filed a new petition for review against the Department of Labor, Secretary of Labor Robert Reich, and OSHA and Assistant Secretary of Labor in charge of OSHA, John Dear. This is the fifth petition for review against OSHA that ASH has filed with the D.C. Circuit Court. The first four petitions have been dismissed or decided against ASH.

August 1994

25 As of August 25, OSHA's public docket reflected 25,999 public comments and 274 notices of intention to appear at the hearings.

September 1994

2 OSHA released its tentative schedule of witnesses to appear at the public hearings on the OSHA proposed rule on indoor air quality and indoor smoking scheduling hearings from September 20 through the week of December 5.

2046281989

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

OSHA has docketed 500 additional notices of intent to appear at the hearings which places the number at 794. The number of written comments docketed by OSHA stands at 31,999.

20 OSHA began hearings on a proposed rule that would create a de facto smoking ban in all areas that can be deemed workplaces - including private offices, bars, restaurants, hotel rooms, and even residences and cars when they are used as workplace.

October 1994

3 OSHA filed a motion to dismiss ASH's latest petition for review.

12 ASH filed a supplemental motion to expedite its petition for review that is currently pending in the U.S. Court of Appeals for the District of Columbia.

19 OSHA extended the hearings schedule into January 1995.

November 1994

22 Philip Morris notified the judge presiding over hearings on OSHA that we would not appear to testify as scheduled. Philip Morris elected not to testify on December 1, 1994, because it was clear the testimony would not be received by OSHA with the impartiality required of an administrative law hearing. The Company stated concerns about the following: First, plaintiff's attorneys with product liability cases pending against Philip Morris (and others in the tobacco industry) who are misusing the hearing process to further their own personal and financial interests -- interests which are unrelated to the OSHA rule making. Second, the inclusion of well-known anti-tobacco activists who are not OSHA employees but serve in an "official" capacity on the OSHA panel made it clear that the proceedings are anything but objective and fair.

November 1994

The D.C. Circuit Court of Appeals dismissed the fifth petition for review filed by ASH against the Department of Labor and OSHA. ASH's petition was dismissed as "not ripe for judicial review".

As of the end of November, OSHA had docketed almost 100,000 public comments.

December 1994

6 R.J. Reynolds Tobacco Co. (RJR) announced it would not testify as scheduled (Dec. 7) at OSHA's hearings, claiming it had not received a commitment from presiding judge that it would be allowed to testify as a panel, asked for a

2046281990

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

postponement of its testimony until it received such a commitment. The testimony was thereafter rescheduled for January 17 - 19, 1995.

16 OSHA hearings are adjourned until January 4, 1995.

23 John Banzhaf, Executive Director of ASH, sent a "Notice of Objection" to the withdrawal of PM proceeding testimony during the hearing to the presiding judge. It requested that, unless PM testified the judge should 1) exclude PM from further participation, 2) strike the testimony of all PM witnesses and 3) strike the cross-examination by any PM attorneys.

January 1995

5 When a plaintiff's lawyer objected to PM cross examination saying that since PM had withdrawn, they should not be allowed to cross-examine a witness, the judge noted that he had received a similar motion from ASH. However, with the OSHA's agreement, he determined that ASH had no standing to make the motion. He further noted that the overall goal was to develop the fullest possible record and to encourage participation by everyone. The judge determined that PM would be allowed to continue to participate.

17 RJR representatives testified as to scientific and technical aspects of ETS exposure, epidemology and engineering alternatives for ETS control. Cross examination lasted until the 19th.

2046281991

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

U.S. LITIGATION

February 1994

1 Philip Morris joined with a coalition of local businesses to announce that it had filed suit against the city of San Francisco for overstepping its authority in imposing a restrictive smoking ban on city workplaces.

March 1994

15 A Florida appeals court ruled that a group of flight attendants can pursue a class-action lawsuit against the tobacco companies, alleging damages caused by secondhand smoke. A trial court had ruled earlier that the plaintiffs would each have to pursue separate lawsuits.

24 Philip Morris files $10 billion suit against ABC for libel in connection with allegations made on "Day One." (See "Day One.")

30 Attorney Melvin Belli and other plaintiffs attorneys filed a class-action suit against five U.S. tobacco companies on behalf of smokers addicted to cigarettes as a result of the industry's alleged "manipulation" of nicotine.

April 1994

5 Shareholder William Steiner filed a class action suit against Philip Morris alleging that the company violated securities laws by hiding evidence that nicotine is addictive.

May 1994

6 A group of smokers filed a class action suit in Florida contending that "addiction" to cigarettes has caused their health problems. The plaintiffs are asking for $200 billion in damages.

13 The estate of Burl Butler filed a $650 million wrongful death suit against the tobacco companies, alleging that his lung cancer death was caused by secondhand smoke following the May 7 death of Burl Butler. Butler and his wife sued Philip Morris, RJ Reynolds, Brown & Williamson and 10 other tobacco companies, on October 12, 1992 claiming personal injury, fraud and negligence.

In Florida, legislation to allow the state to sue tobacco companies to recover Medicaid costs from patients who claim illnesses related to smoking arrived at the Governor's desk.

2046281992

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

23 The Attorney General of Mississippi seeks damages and restitution of funds paid by the State to provide health care for eligible citizens who have had injuries, diseases or sicknesses alleged to have been caused by tobacco.

May 1994 (cont.)

26 Governor Lawton Chiles (FL) signed into law Senate bill 2110, which according to a Chiles press release, "enables the state to sue tobacco companies in order to recover millions of dollars in Medicaid payments for health problems related to smoking."

June 1994

22 Maryland state officials stated that they may sue the tobacco industry "in an effort to recover Medicare money spent on treating smoking-related illness."

23 Senator Frank Lautenberg and Senator Tom Harkin announced that they would introduce legislation which would authorize the U.S. Attorney General to sue tobacco companies to recoup Medicare and Medicaid expenditures for illness alleged to be related to tobacco. It is an amendment to the Product Liability Fairness Act.

July 1994

1 Associated Industries of Florida (AIF) and a group of product manufacturers and retailers, filed a constitutional challenge against CS/SC/SB 2110 (the bill enables the state to sue tobacco companies in order to recover millions of dollars in Medicaid payments for health problems related to smoking) in Leon County Circuit Court. Philip Morris is a co-plaintiff in the suit.

22 According to the Associated Press, in West Virginia, seven lawyers appointed by Attorney General Darrell V. McGraw Jr. will work on a lawsuit aimed at collecting damages for the public from several tobacco companies. The lawsuit has not yet been prepared or filed.

The anti-smoking group Action on Smoking or Health (ASH), file suit Baltimore, Maryland in order to attempt to have any court challenges to the Maryland smoking ban incorporated into their suit regardless of where other challenges are filed. (AP, 7/26)

A broad coalition of Maryland businesses filed suit in the circuit Court of Talbot County challenging the workplace smoking regulations adopted by the Maryland Division of Labor and Industry. The suit seeks to stop the

2046281993

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

implementation of a statewide workplace smoking ban scheduled to take effect 8/1. (PR Newswire, 7/22)

27 At the request of the tobacco industry, Talbot County Circuit Judge William Horne issued an order July 27 to delay the effective date (8/1) of the Maryland state ban on smoking in the workplace 10 more days. The state attorney general's office asked the Court of Special Appeals to set aside Horne's order. (AP, 7/29)

July 1994 (cont.)

29 The Maryland Court of Special Appeals refused to overrule a circuit court judge's order prohibiting a state ban on smoking in the workplace from taking effect August 1. Horne schedules hearings for August 11/12 on request of tobacco companies and 11 Talbot County businesses for a longer stay that would keep the regulations from taking effect while they are challenged in court. (AP, 7/29)

August 1994

17 The state of Minnesota and Blue Cross and Blue Shield of Minnesota filed suit against Philip Morris, R.J. Reynolds, Brown & Williamson, B.A.T. Industries, Lorillard, American, Liggett, The Tobacco Institute and the Council for Tobacco Research in the District court of Ramsey County, Minnesota.

The state of Minnesota seeks restitution of funds it has expended through various state programs to provide medical treatment of diseases alleged to have been caused by smoking. In addition to Medicaid-type programs, the state seeks restitution of funds expended through its State Employee Group Insurance Program and for programs it has funded and promoted on smoking cessation. Blue Cross and Blue Shield seeks restitution of funds it has expended to provide medical treatment of individuals who have allegedly been injured by cigarette smoking.

26 Owen Hinkson, a prisoner in a Pennsylvania jail, filed an Amended Complaint, *pro se*, against Philip Morris, other tobacco companies and prison officials in the U.S. District Court for the Middle District of Pennsylvania. Plaintiff alleges unspecified injuries caused by his exposure to ETS and claims that his constitutional rights were violated due to his exposure to ETS. Plaintiff seeks $50,000 each for actual and punitive damages.

29 Benjamin Smith, a prisoner incarcerated in an Indiana prison, filed suit *pro se* in the U.S. District Court for the Southern District of Indiana. Plaintiff alleges he has unspecified injuries due to his exposure to ETS. He is seeking $2,000,000 in actual damages and $3,000,000 in punitive damages.

2046281994

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

September 1994

20 The Attorney General of West Virginia filed suit in Kanawha County Circuit Court in West Virginia against tobacco manufacturers and trade organizations, seeking to recover medical costs paid by the state for individuals whose illnesses were allegedly linked to tobacco use. The suit seeks punitive damages, compensation for future health costs, and a ban on promoting cigarettes to minors.

21 A U.S. District Court judge in California dismissed a suit against the tobacco industry that sought to recover damages for plaintiffs' costs for purchasing nicotine patches and additional medical treatment for their alleged "addiction"s to cigarettes. The plaintiffs alleged that the defendants had violated the Racketeering Influenced And Corrupt Organizations ("RICO") Act.

September 1994 (cont.)

22 Plaintiffs filed suit against Philip Morris and other tobacco companies in the U.S. District Court for the Eastern District of Louisiana (Granier) seeking certification a class comprised of "All residents or domiciliaries of the United States who are addicted to nicotine ...."

October 1994

7 Plaintiffs in California appealed the dismissal of a suit against the tobacco industry that alleged the defendants violated the Racketeering Influenced And Corrupt Organizations ("RICO") Act (Allman).

17 In a case pending in U.S. District Court for the Northern District of Texas, Shanna Shipman, as next friend of Shannon Moore, a twenty month old infant, sued Philip Morris, alleging that the infant received third and fourth degree burns as a result of a car fire allegedly caused by a Marlboro 100 cigarette.

18 Plaintiff, Lou Boyer, a/k/a MacArthur Smith, an inmate at the Nevada State Prison, served, *pro se*, on Philip Morris, a Second Amended Complaint, alleging that he has emphysema, asthma and other personal injuries caused by smoking.

28 A Florida state court certified a class of "All United States citizens and residents, and their survivors who have suffered, presently suffer or who have died from diseases and medical conditions caused by their "addiction" to cigarettes that contain nicotine."

November 1994

7 The Municipal Court of Riverside County, California, issued judgment in favor of Philip Morris and the other tobacco defendants in seven cases brought by the same plaintiffs which had been consolidated for purposes of the trial.

2046281995

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

10 In a case in Superior Court, Strafford County, New Hampshire, against Philip Morris and other tobacco companies, Roxanne Ramsey-Buckingham alleges she has lung cancer as a result of her exposure to ETS. Much of the complaint recites the names of the plaintiffs' family members and friends who smoked in her presence.

10 Four inmates at a federal prison in Minersville, Pennsylvania, filed suit, *pro se*, in the U.S. District Court for the Eastern District of Pennsylvania, alleging unspecified injuries from smoking cigarettes, fear of cancer as a result of their exposure to ETS, and that exposure to ETS constitutes cruel and unusual punishment under the Eighth Amendment of the Constitution. Plaintiffs seek $100,000,000 in actual damages, and an unspecified amount in punitive damages.

November 1994 (cont.)

15 All parties filed their witness and exhibit lists in a case pending in Superior Court of Marion County, Indiana, in which trial is scheduled to commence on January 31, 1995. The plaintiff is Yvonne Rogers, as Executrix of the Estate of Richard Rogers.

16 Plaintiffs in a suit filed in the U.S. District Court for the Eastern District of Louisiana (Granier), filed a motion requesting that their action be consolidated with another putative class action suit (Castano), pending in the same court.

18 A Stipulation of Dismissal with Prejudice was entered by the U.S. District Court for the District of the Virgin Islands. Plaintiff sued Philip Morris Products Inc., alleging "extremely poor blood circulation in [his] lower legs" as a result of smoking cigarettes.

23 In a case brought in the U.S. District Court for the Western District of Louisiana, plaintiffs voluntarily dismissed the action with prejudice. Plaintiffs, the widow and adult children of decedent, alleged that the decedent's lung cancer was caused by cigarette smoking, and that decedent was also injured by exposure to ETS from the cigarettes he smoked.(case?)

29 Defendants in a class action case in Florida noticed an appeal to the Florida Third District Court of Appeals, seeking to overturn a Florida state court's ruling granting class certification to a class of plaintiffs consisting of "All United States citizens and residents, and their survivors, who have died from diseases and medical conditions caused by their "addiction" to cigarettes that contain nicotine." (Engle)

2046281996

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

29 James Gillman filed suit in Circuit Court, Washington County, Tennessee, alleging he has Buerger's disease as a result of smoking, and his "addiction" to smoking contributed to his Buerger's disease.

December 1994

12 In suit pending against Philip Morris and other tobacco companies, a Florida state court certified a class of "all nonsmoking flight attendants who are or have been employed by airlines based in the United States and are suffering from diseases and disorders [allegedly] caused by their exposure to secondhand cigarette smoke in airline cabins." (Broin)

14 A hearing was held before a United States District Judge in the Eastern District of Louisiana regarding plaintiffs' motion for class certification. The disposition of that motion is currently pending. (Castano)

2046281997

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

FTC

May 1994:

The Federal Trade Commission (FTC) reports it is looking at alternatives to the FTC "tar" and nicotine test because the tests do not "predict the actual human consumption."

June 1994:

On June 7, Henry Waxman, Chairman of the Subcommittee on Health and Environment of the House Committee on Energy and Commerce asked the National Cancer Institute (NCI) to sponsor a conference on the FTC's "tar" and nicotine test methods and make recommendations.

July 1994:

FTC requests that NCI convene a conference to review "tar" and nicotine testing methods, consider the issue of "compensation", possible revisions of the current technology and information on the potential health benefits of lower "tar" cigarettes.

November 1994:

NCI announces conference for December 5 and 6; the industry has one hour to present information.

December 1994:

The conference was held on the 5th and 6th; industry submissions and presentations were made. NCI's recommendations included: publishing information on the range of yields accounting for differences in how people smoke, increased public education, greater involvement on the part of government agencies, and a re-evaluation of the system every five years.

The NCI is not a regulatory agency; The FTC is not required to take action on these recommendations. The recommendations does not make suggestions for implementing procedures.

2046281998

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

WAXMAN HEARINGS AND RELATED ACTIVITIES

Rep. Henry Waxman (D-CA) was Chairman of the Health and Environment SubCommittee of the House Energy and Commerce Committee during the time period concerned here. Mr. Waxman introduces anti-tobacco legislation yearly and is also a co-sponsor of other anti-tobacco legislation.

March 1993

18 Rep. Henry Waxman holds hearings on air pollution in schools/day care facilities before the Energy and Commerce Health and Environment Subcommittee. Those testifying were Dr. Margo T. Orge, Director of the Office of Radiation and Indoor Air at EPA, and the president of the American Lung Association.

July 1993

21 Rep. Henry Waxman scheduled hearings on ETS before the Energy and Commerce Health and Environment Subcommittee. Testifying were EPA Administrator Carol Browner, Dr. Mort Lippman, Dr. Richard Heyman (American Pediatrics), Dr. Wagener (American Lung Association), children with their parents, Dr. Lonnie Bristrow (American Medical Association), Dr. Gio Gori and Dr. Alfred Meuler (Action on Smoking and Health, ASH).

September 1993

21 Rep. Henry Waxman and Senator Edward Kennedy hold joint hearings of the Energy and Commerce Health and Environment Subcommittee and Senate Labor Committee in order for President Clinton to unveil his food safety reform package.

November 1993

3 Rep. Henry Waxman introduced H. R. 3434 "The Smoke Free Environment Act" which would effectively restrict smoking to separately ventilated areas of nearly every non-residential building in the U.S. (Version 1 dated March 21, 1994)

22 Rep. Henry Waxman introduced H. R. 3614 the "Tobacco Education and Child Protection Act." The bill would prescribe labels for packages and advertising for tobacco products as well as restricting the advertising and promotion of tobacco products.

December 1993

22 Rep. Henry Waxman sent a letter to the EPA's Carol Browner requesting that the EPA review potential compliance costs and benefits that could result from the proposed "Smoke-Free Environment Act" and placing the deadline of January 31, 1994 for return of EPA information. (BNA Occupational Safety and Health Report)

2046281999

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

January 1994

31 Rep. Henry Waxman distributes "ETS Facts" sheet to his colleagues in an effort to gain support for his bill.

March 1994

10 Rep. Henry Waxman asked the Justice Department to investigate whether or not tobacco companies violated the law by failing to report "added nicotine" in cigarettes.

17 Gray Robertson of HBI testified on behalf of the TI regarding ETS.

25 Dr. David Kessler testified before Waxman's subcommittee on the possibility of regulating tobacco under the Federal Food, Drug and Cosmetic Act.

31 Rep. Henry Waxman held a press conference to release a study on nicotine by former Philip Morris researcher, Victor DeNoble. Waxman alleged that the study was suppressed by Philip Morris because it proved that nicotine is addictive. Philip Morris issued a statement refuting Waxman's allegations.

April 1994

13 Rep. Henry Waxman released staff report analyzing 1981 article by A. Spears (Lorillard) which dealt with blending practices and nicotine content in low tar cigarettes.

14 The CEOs of the major tobacco companies testified before the Subcommittee on Health and the Environment of the House Energy and Commerce Committee.

A. Spears (Lorillard) issues a statement clarifying his article. According to Spears, Waxman "made a serious error in reasoning after reading my 1981 paper - that is, he assumed that cigarettes with higher concentrations of nicotine in the tobacco result in higher yields of nicotine in the tobacco smoke...That assumption is incorrect."

28 Former Philip Morris scientists Victor DeNoble and Paul Mele testified before Waxman's subcommittee. Both researchers claimed that Philip Morris would not allow them to publish internal research on nicotine.

May 1994

17 Former Secretary of Health Education and Welfare Joseph A. Califano testifies regarding health care costs allegedly attributed to tobacco products.

2046282000

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

26 James Glenn, President and CEO of the Council for Tobacco Research, testified before Congressman Waxman's subcommittee. Glenn defended the Council's research and it's scientific integrity.

Congressman Meehan (D-MA) and 6 other House members sent a letter to U.S. Attorney General Janet Reno requesting Department of Justice initiate an investigation into tobacco company activities and statements.

June 1994

21 Dr. David Kessler appeared for a second time before Waxman's subcommittee to build a case for FDA regulation of tobacco products. Kessler claimed that Brown and Williamson "secretly" developed a genetically altered tobacco plant with higher nicotine content for use in cigarettes.

23 Brown and Williamson CEO Thomas Sandefur testified before Waxman's committee. In his testimony before the subcommittee, Sandefur accused FDA Commissioner Kessler of "grandstanding" and "making false allegations." He defended his company's research and insisted that there was nothing secretive about it.

July 1994

22 Waxman released a survey of the scientific advisory board of the Center for Indoor Air research, indicating that seven of the nine members consider ETS a carcinogen.

November 1994

29 Rep. Henry Waxman held the final anti-tobacco hearing of the 103rd Congress focusing on smokeless tobacco products. The hearing was only attended by three Congressmen and received little media attention.

December 1994

20 Rep. Henry Waxman issues two final staff reports on his investigation into the industry addressing:

1) the industry's response to public concerns over ETS and
2) alleged nicotine "manipulation" by American Tobacco Company (ATC).
3) general summary

The conclusion states that ATC documents "reflect an intense research and commercial interest in nicotine." The ETS report focused largely on Healthy Buildings International (HBI), a vendor to the TI and individual tobacco companies and states in conclusion: "The veracity of HBI's responses cannot be fully evaluated without further investigation."

2046282001

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000

Rep. Henry Waxman recommends that: The FDA be given new legal authorities by Congress; The President develop a strategy for insuring that the industry be subject to a comprehensive investigation, and; the subcommittee's investigation be continued.

The reports received limited media attention.

December 1994 (cont.)

14 Congressman Meehan (D-MA) issued a press release and delivered a "Prosecution Memorandum" to U.S. Attorney General Janet Reno requesting the Department of Justice to initiate an investigation into the tobacco companies, trade associations and suppliers. The press release generated very little media interest.

2046282002

Source: https://www.industrydocuments.ucsf.edu/docs/flbk0000